

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6520 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 & 2 Yes
3 to 5 No
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KANBI ARJAN KANA

Versus

STATE OF GUJARAT

Appearance:

MR PS CHAMPANERI for Petitioners

MR UA TRIVEDI, AGP, for Respondent No. 1, 2 & 4

MR MC BAROT for Respondent No. 3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 30/12/1999

ORAL JUDGEMENT

Rule. Learned AGP Shri Umesh Trivedi waives
service of rule for respondents Nos. 1, 2 and 4 and

learned advocate Shri M.C.Barot waives service of rule for respondent No. 3. At the request of the learned advocates, the petition is finally heard today.

2. The petitioners have been aggrieved by an order dated 11.8.99 passed by the State of Gujarat, a copy of which is annexed as Annexure F to the petition.

3. The facts giving rise to the present petition in a nutshell are as under:-

4. The petitioners were owners of agricultural lands but their lands had been acquired by the Government of Gujarat when Sipu Irrigation Project was being implemented for the purpose of construction of Sipu dam. As a part of the government policy, in addition to payment of compensation, the petitioners were also granted agricultural lands so that they can continue their agricultural activities on the lands granted to them.

5. For the purpose of grant of land to the petitioners and other similarly situated agriculturists, it was decided to resume gaucher land belonging to Respondent No. 3 - Santvada Group Gram Panchayat. Before resumption of the land in question under the provisions of sec. 108(4) of the Gujarat Panchayats Act, 1993, (hereinafter referred to as 'the Act'), respondent No. 3 was heard by the Collector, Banaskantha. After considering the objections raised by respondent No 3, the Collector, Banaskantha, ultimately passed an order dated 7.6.99 whereby land admeasuring 76 acres and 2 gunthas out of survey No. 104 of village Santvada, taluka Dhanera was resumed. Out of the land resumed, the petitioners were given lands for cultivation in accordance with the government policy. The petitioners were given possession of the lands granted to them and the petitioners have also started cultivating the same.

6. Respondent No. 3 panchayat had challenged the validity of order dated 7.6.99 passed by the Collector, Dist. Banaskantha before the State of Gujarat by filing a revision application under the provisions of Sec. 211 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as 'the Code') on the ground that because of the resumption, grazing land available for cattle belonging to the residents of several villages would be reduced. It was also submitted by respondent No. 3 panchayat that a portion of the land which was resumed was used by the villagers as crematorium, public road, etc.

7. Ultimately, after hearing the concerned parties, by the impugned order dated 11.8.99, the order of the Collector, Banaskantha dated 7.6.99 has been quashed and set aside and the Collector, Banaskantha has been directed to take a fresh decision after making an inquiry and after considering certain factors.

8. The said order dated 11.8.99 has been challenged before this court by the petitioners, who are granted the land in question.

9. Learned Advocate Shri Champaneri appearing for the petitioners has mainly submitted that it was not open to the State of Gujarat to take into revision the order dated 7.6.99 passed by the Collector, Banaskantha for the reason that the Collector, Banaskantha had resumed the land vested in respondent No. 3 panchayat in pursuance of the power delegated to him by the State of Gujarat. It has been submitted by him that the power to resume the land vested in a panchayat is only with the State of Gujarat and the State of Gujarat had delegated the said power to the Collector under Notification dated 26.7.94, a copy of which is annexed and marked Annexure B to the petition. In the circumstances, order of the Collector, Banaskantha, is to be treated as an order of the government and therefore under the provisions of sec. 211 of the Code, the State Government could not have revised its order.

10. Learned AGP Shri Trivedi appearing for the respondent government could not dispute the above-referred submission made by learned advocate Shri Champaneri for the reason that, in fact, the Collector, Banaskantha had exercised powers of the State of Gujarat while passing the impugned order dated 7.6.99.

11. It is not in dispute that as per the provisions of sec. 211 of the Code, the State Government and any revenue officer, not inferior in rank to an Assistant or Deputy Collector may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer so as to examine the legality or propriety of the decision taken by such an officer. The relevant portion of sec. 211 of the Code is reproduced hereinbelow:-

"The State Government and any revenue officer,
not inferior in rank to an Assistant or Deputy
Collector or a Superintendent of Survey, in the
respective departments, may call for and examine
the record of any inquiry or the proceedings of

any subordinate revenue officer for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

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12. Upon perusal of the said section, it is very clear that the State Government can take into revision a decision which has been taken by an officer subordinate to the State Government but the State Government has no power to reconsider its own decision. In other words, it is not open to the State of Gujarat to review its own decision under the provisions of sec. 211 of the Code.

13. The short question which is required to be examined in this case is whether the order passed by the Collector, Banaskantha dated 7.6.99 can be taken into revision by the State Government under the provisions of sec. 211 of the Code.

14. It is not in dispute that power to resume land vested in a panchayat vests with the State Government as per the provisions of sec. 108(4) of the Act. The said sub-section reads as under:

"Where an open site or waste, vacant or grazing land vesting in Government, has been vested by Government in a panchayat whether before or after the commencement of this Act, then it shall be lawful for the State Government to resume at anytime such site or land, if it is required by it for any public purpose:

Provided that in case of any improvement of such site or land made by the panchayat or any other person, the panchayat or person, as the case may be, shall be entitled to compensation equal to the value of such improvement and such value shall be determined in accordance with the provisions of Land Acquisition Act, 1894."

15. Thus, the gauchar land vested in respondent No. 3 panchayat could have been resumed only by the State Government but in view of the provisions of sec. 271 of the Act, it is open to the State Government to delegate the said power to any officer of the government and in pursuance of the said power, the State Government has

delegated the powers under sec. 108(4) to the Collector as stated hereinabove.

16. The question then arises for consideration of this court is, when the government delegates its statutory power to a particular officer and in pursuance of the said delegation, when the officer acts in a particular manner, is the act done by the officer is the act of the officer or of the government? In my opinion the act must be treated as an act of the government.

17. Statute has given the power to the government to resume land vested in a panchayat. The government delegated the said power to the Collector. The power was exercised by the Collector only as per the statutory provisions. In the circumstances, the position which emerges would be as under. The exercise of power by the officer would be treated as exercise of power by the government because only the government could have taken action in pursuance of sec. 108(4) of the Act. As sec. 271 of the Act empowers the government to authorise any officer of the government to exercise any of the powers exercisable by the state government, except the powers to make rules, the power delegated to any officer would still remain the power of the government and therefore the officer who exercises the powers u/s 108(4) of the Act is in fact not exercising his own statutory power but he is exercising powers of the government and therefore his action taken in pursuance of delegation u/s 271 of the Act would be treated as an action of the government.

18. Section 211 of the Code empowers the State Government and certain revenue officers to call for and examine record of any inquiry or the proceedings of any subordinate revenue officer. Thus, the State Government, under the provisions of sec. 211 of the Code, can examine legality of an order or proceedings of any of its subordinate officers. If the decision is taken by the State Government itself, or if someone has taken the decision for the State Government as its delegate, the provisions of sec. 211 of the Code would not empower the State Government to consider legality or propriety of such a decision. Thus, it is clear that the State Government cannot take into revision its own decision under the provisions of sec. 211 of the Code.

19. In the above set of facts, when the Collector, Banaskantha exercised powers under sec. 108(4) of the Act, he in fact exercised the powers of the State Government as its delegate and therefore for all practical purposes the order dated 7.6.99 passed by the

Collector, Banaskantha, is an order of the State Government. The question then arises, whether the State Government can decide a revision application filed against an order which was passed in exercise of powers which were to be exercised by the State Government?

20. As stated hereinabove, it is not in dispute that the Collector, Banaskantha had exercised the power which was of the State Government while passing the order dated 7.6.99 for resuming the land in question. The said order was virtually an order of the Government though it was passed by the Collector and in the circumstances it was not open to the State of Gujarat to take it into revision under the provisions of sec. 211 of the Code.

21. On this short ground, the petition deserves to be allowed and the impugned order passed by the State of Gujarat deserves to be quashed and set aside.

22. The petition accordingly stands disposed of as allowed. The order dated 11.8.99 passed by the State of Gujarat is quashed and set aside. Rule is made absolute with no order as to costs.

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